IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17930 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHBHAI NATHALAL PARMAR - Petitioner(s)
Versus
GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION & 1 - Respondent(s)

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Appearance :
MR SHALIN N MEHTA for Petitioner(s) : 1,
MR CHINMAY GANDHI for MR MB GANDHI for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 24/03/2006

ORAL JUDGMENT

1.In the present petition, the petitioner a retired employee of Gujarat Industrial Development Corporation has prayed for release of his gratuity which was held

by the respondents. The petitioner retired on superannuation with effect from 28-02-2003. Since the respondents did not release his gratuity amount to the tune of Rs.2,58,000/- despite demanded by the petitioner, he preferred the petition. It is not in dispute that during the pendency of the petition substantial portion of the gratuity of the petitioner has been released and the issue now survives with respect to adjustment of certain leave encashment benefits already granted to the petitioner. The respondents are seeking to adjust a total leave period to the extent of 160 days, benefits of which was granted to the petitioner for leave encashment at the time of his retirement. It is in this narrow compass that the controversies survived though at the time of filing of this petition large issues were involved. In the nutshell the case of the petitioner is that the respondents have wrongly withheld or adjusted the amount of leave encashment from the gratuity payable to the petitioner. It is the case of the petitioner that he had full 300 days of leave to his credit at the time of his retirement for encashment which the employer rightly permitted the petitioner to encash. It is therefore, contended that respondents are now wrongly

withholding a part of gratuity amount under the guise of overpayment made for leave encashment.

2. On the other hand the case of the respondents is that at the time of retirement, service book of the petitioner was not readily available. It was not possible to ascertain with certainty the exact number of days of leave to the credit of the petitioner. With the understanding that same may be later on adjusted, the petitioner was allowed to encash leave to the full extent of 300 days. In fact the petitioner gave undertaking on 25-07-2003 in which he clearly stated that he retired on 28-02-2003. On account of non-availability of service book, Corporation has not been able to release gratuity or leave encashment. He therefore, stated that in case in future any problem arises about the leave without pay or recovery of amount, he will allow to recover the same without raising any dispute. It was under this undertaking that respondents released his full leave encashment. Subsequently, however, upon recreation of the service book, it was found that he did not have 300 days of leave to his credit for encashment and that certain spells of leave which the petitioner had encashed

between 22-05-1986 to 28-10-1986 for 160 days was not reflected in his leave account on debit side. All such discrepancies being noticed, it was found that the petitioner was wrongly given the benefit of leave encashment to the full extent. It was also found that in yet another spell of 54 days from 04-04-1988 to 27-05-1988, the petitioner had availed of leave which was not reflected in his service book. Additionally, another period of 47 days of leave enjoyed by the petitioner for the period between 10-04-1989 to 26-05-1989 also required to be adjusted on the debit side of the leave account of the petitioner. Considering all these aspects of the matter, respondents adjusted the overpayment of leave encashment made to the petitioner from the gratuity payable to him.

3. The learned advocate Shri Shalin Mehta for the petitioner submitted that the respondents are not justified in adjusting the overpayment of leave from gratuity balance of the petitioner. He pointed out that the petitioner was given leave with pay at the relevant time which would suggest that he had leave to his credit at the time when such leave was granted. He submitted that respondents have put up a false defence.

He further submitted that however be the disputed question of facts, this Court can go into same and decide the controversy. Additionally, he also submitted that respondents could not have adjusted the said amount from the gratuity payable to the petitioner.

4.On the other hand learned advocate Shri Chinmay Gandhi appearing for the respondents submitted that the respondents were justified in adjusting the overpayment of leave encashment paid to the petitioner. It was stated in his undertaking that he would account for the same later on if it is found that there is overpayment made to the petitioner. Upon verifying the service record it was found that leave encashment though enjoyed by the petitioner were not reflected on the debit side of the leave account. The employer therefore, correctly adjusted the leave so enjoyed by the petitioner and found that the petitioner did not have full 300 days of leave to his credit to permit him to encash the same on his retirement. It was contended that the petitioner himself was responsible for the loss of his service book to which suggestion however, the learned advocate for the petitioner strongly opposed.

5. Be that as it may the fact remains that we are entering into highly disputed questions of facts. What exactly was the number of days of leave to the credit of the petitioner at the time of his retirement is not possible to be ascertained from materials produced on record. Whether the petitioner was responsible for loss of his service book or whether some other employee as suggested by the employee was responsible for such a loss is not possible to ascertain. It is not possible to ascertain without going into the facts whether the respondents had given a valid basis for recreation of service book. The learned advocate for the petitioner submitted that there is no basis for entries made in the service book of the petitioner reconstituted by the respondents. Even if he is substantially correct in his submission, I have no other base to fall back upon and to conclude that the petitioner is correct in suggesting that he actually had more than 300 days leave to his credit on the date of retirement. There is absolutely no possibility of deciding these issues without leading of evidence. In facts of the present case despite urging from the learned advocate for the petitioner, I find it impossible to go into disputed

questions of fact and come to the conclusion as to whether the petitioner is correct or respondent is justified in its stand. Additionally, it is also not possible to uphold the contention of the learned advocate for the petitioner that the said amount could not have been adjusted against the gratuity payable to the petitioner. The petitioner himself had given undertaking in no uncertain terms that his benefits may not be withheld any longer for want of service book and in case if it is found that in future overpayment is made, he will agree to adjust the same. In that view of the matter, the provisions of the gratuity scheme cannot be made applicable in facts of the present case. In the result, the petition fails is hereby rejected.

(Akil Kureshi,J.)

(raghu)